

## Internal Revenue Service

Department of the Treasury

District  
Director

Delaware-Maryland District

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact:

Telephone Number:

Refer Reply To:

Date: SEP 11 1987

## CERTIFIED MAIL:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(4) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED] which you were organized are as follows: The purposes for

- "(a) To consider and deal by all lawful means with common problems of [REDACTED] and to secure cooperative action advancing common purposes of the members of the association.
- (b) To promote common work and foster improvement of the neighborhood known as [REDACTED]
- (c) To enforce the deed restrictions common to [REDACTED]
- (d) To own, occupy, manage, maintain, and regulate common areas and facilities in [REDACTED]
- (e) To pursue charitable purpose from which no private, pecuniary gain or profits is to be derived.
- (f) To exercise all of the corporate powers set out in [REDACTED]

[REDACTED] purpose is to maintain roadways by means of a \$ [REDACTED] per month (per lot owner) monthly dues. It is a private development and, therefore, the roads are not maintained by the County or State.

[REDACTED] was developed with [REDACTED] lots each being [REDACTED] acres. Currently, [REDACTED] lots consist of [REDACTED] property owners. Some homes will be built on [REDACTED] plus acres.

According to [REDACTED] is owned by [REDACTED]. "Some of the lots, bottomland, lakes and trails are retained by the owner of the development and do not become private property of owners of lots or common properties of all owners of lots; such features, however, may be used by the owners of lots upon the following terms and conditions:

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	[REDACTED]	[REDACTED]	[REDACTED]				

Form 1937-A (Rev. 8-80) Correspondence Approval and Clearance

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- [REDACTED]
- (a) Use of the retained properties shall not interfere with any agricultural activity conducted thereon by the owner;
  - (b) No trash or garbage shall be dumped upon the retained areas;
  - (c) No motorized vehicles, regardless of the number of wheels, shall be used on the retained areas;
  - (d) There shall be no hunting allowed on the retained areas;
  - (e) Fishing shall be allowed in the lakes on the retained areas and the creeks, but no gasoline motored boats shall be permitted thereon."

No areas are open to the general public. The common areas are for property owners and guests. There is no gate to keep the public out, but the association does have a sign. The one large sign at the entrance reads:

[REDACTED]  
[REDACTED] " [REDACTED] "

The organization's purpose is to contribute by means of monthly dues, agreed upon by the property owners, to be used to maintain the roadways which are part blacktop and mostly rock. With the roads being mostly rock, the monthly dues will continue to pay for the rock needed to keep the roads passable for the postal and trash carriers, as well as the property owners.

The reason the organization became an association is that the U.S. Postal Service discontinued mail service due to the conditions of the roads. To date the only activity of the organization has been maintaining the roadways on an as needed basis.

In the future, the organization plans to enhance the common areas of the neighborhood by landscaping and maintaining said areas with financing from monthly dues, when the road is in no further need of repairs. Also, in the future, there has been discussions of trails and pathways in common areas.

The Articles of Incorporation, Part TWO states, "The members of this association must be an owner of property located in [REDACTED] or a resident of property located in [REDACTED]." Each lot owner pays a \$[REDACTED] initiation fee and then monthly dues of \$[REDACTED] per lot. The same holds true for all new property owners. As long as a member is paid to date on their monthly dues, they are allowed to participate in voting on issues at the association's meetings.

Your income is generated from initiation fees and monthly dues.

Your expenses are used to maintain roadways and when the road is in no further need of repair, they will be used (in the future) for landscaping and maintaining common areas.

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations, not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Federal Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 72-102, 1972-1 C.B. 149, states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for use of the residents is exempt under section 501(c)(4) of the Code. Membership is required of all owners of real property in the development, and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by a municipal government, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, 1974-1 C.B. 131, modified Revenue Ruling 72-102 by stating guidelines under which a homeowner's association could qualify for exemption under section 501(c)(4) of the Code. These guidelines are:

1. The organization must service a "community" which bears a reasonable recognizable relationship to an ordinarily identified as a governmental unit.
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities must be for the use and enjoyment of the general public.

This ruling states that a community, within the meaning of section 501(c)(4) of the Code and the regulations, ". . . is not simply an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein."

Revenue Ruling 74-99 stated that it modifies the misconception given in Revenue Ruling 72-102 that a housing development is to be equated with the term "community" within the meaning of section 501(c)(4) of the Code, thereby giving rise to the implication that any housing development may qualify as a community for exemption purposes regardless of other facts in the case. The term "housing development" is not to be viewed as necessarily coextensive with the term "community", so that not every association which oversees a housing development is entitled to claim the exemption.

Revenue Ruling 74-99 states that Revenue Ruling 72-102 "... was intended only to approve ownership and maintenance by a homeowners' association of such areas as roadways and parklands, sidewalks, and street lights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowner's association."

Your activities do not benefit the community because they are limited to the lot owners and the owner of the development. Your common areas are not open for the use and enjoyment of the general public. Your common areas are for the private benefit of your association members and the development owner.

Accordingly, your organization does not meet the definition of a "community". The activities performed by your organization constitute private benefit to the members of your association. Therefore, we conclude that you are serving a private purpose rather than a public purpose and do not qualify for exemption under section 501(c)(4).

Until you have established exempt status, you are not relieved of the requirement for filing federal income tax returns.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners association may elect not to be taxed on its "exempt function income which includes membership dues, fees or assessments from owners of real property." The election is made by filing Form 1120H. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.



[REDACTED]

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

Sincerely yours,

Paul M. Harrington  
District Director

Enclosure: Publication 892